

Introduced by Senator Leno

February 18, 2016

An act to add Section 2920.7 to the Civil Code, relating to mortgages and deeds of trust.

LEGISLATIVE COUNSEL'S DIGEST

SB 1150, as introduced, Leno. Mortgages and deeds of trust: mortgage servicers and lenders: successors in interest.

Existing law imposes various requirements to be satisfied prior to exercising a power of sale under a mortgage or deed of trust. Existing law defines a mortgage servicer as a person or entity who directly services a loan, or is responsible for interacting with the borrower, and managing the loan account on a daily basis, as specified.

This bill would prohibit a mortgage servicer or lender, as defined, upon notification that a borrower has died, from recording a notice of default for at least 30 days after requesting reasonable documentation of the death of the borrower from the successor in interest, as defined. The bill would require the mortgage servicer or lender to, among other things, contact the successor in interest in person or by telephone in order to assess the successor's financial situation and explore options for the successor to avoid foreclosure, provide the successor in interest with information about loan assumption options and foreclosure avoidance programs, and allow a successor in interest to simultaneously apply to assume the deceased borrower's loan and to apply to receive a loan modification. The bill would authorize a successor in interest or the Attorney General to bring an action to enforce these provisions, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 2920.7 is added to the Civil Code, to read:

2920.7. (a) Upon notification that a borrower has died, and where a successor in interest is not a party to the loan or promissory note, a mortgage servicer or lender shall not record a notice of default pursuant to Section 2924 until that servicer or lender does all of the following:

(1) Requests reasonable documentation of the death of the borrower from the successor in interest, including, but not limited to, a death certification or other written evidence of the death of the borrower.

(2) Requests reasonable documentation of the status of a successor in interest as such, and that successor's interest relation to the real property.

(3) Allows at least 30 days after receiving the information in paragraph (1) before taking any further action on the loan.

(4) Allows a successor in interest to simultaneously apply to assume the deceased borrower's loan and to apply to receive a loan modification.

(5) Provides the successor in interest with a single point of contact and provides the successor one or more direct means of communication with the single point of contact.

(6) (A) Provides the successor in interest with information about loan assumption options and foreclosure avoidance programs.

(B) The information in subparagraph (A) shall be provided in Spanish, Chinese, Tagalog, Vietnamese, and Korean and shall include a list of counselors certified by the United States Department of Housing and Urban Development (HUD) that the successor may contact for assistance.

(7) (A) Contacts the successor in interest in person or by telephone in order to assess the successor's financial situation and explore options for the successor to avoid foreclosure. During the initial contact, the mortgage servicer or lender shall advise the successor that he or she has the right to request a subsequent meeting and, if requested, the mortgage servicer or lender shall schedule the meeting to occur within 14 days. The assessment of the successor's financial situation and discussion of options may occur during the first contact, or at the subsequent meeting

1 scheduled for that purpose. In either case, the successor shall be
2 provided the toll-free telephone number made available by HUD
3 to find a HUD-certified housing counseling agency. Any meeting
4 may occur telephonically.

5 (B) A mortgage servicer's or lender's loss mitigation personnel
6 may participate by telephone during any contact required by this
7 section.

8 (C) A successor in interest may designate, with consent given
9 in writing, a HUD-certified housing counseling agency, attorney,
10 or other advisor to discuss with the mortgage servicer or lender,
11 on the successor's behalf, the successor's financial situation and
12 options for the successor to avoid foreclosure. That contact made
13 at the direction of the successor shall satisfy the contact
14 requirements of this paragraph. Any loan modification or workout
15 plan offered at the meeting by the mortgage servicer or lender is
16 subject to approval by the successor.

17 (8) If a mortgage servicer or lender is unable to contact a
18 successor in interest pursuant to paragraph (7), the mortgage
19 servicer or lender shall alternatively do all of the following:

20 (A) Attempt to contact a successor in interest by sending a
21 first-class letter that includes the toll-free telephone number made
22 available by HUD to find a HUD-certified housing counseling
23 agency.

24 (B) (i) After the letter has been sent, the mortgage servicer or
25 lender shall attempt to contact the borrower by telephone at least
26 three times at different hours and on different days. Telephone
27 calls shall be made to the primary telephone number on file.

28 (ii) A mortgage servicer or lender may attempt to contact a
29 successor in interest using an automated system to dial successors
30 in interest, provided that, if the telephone call is answered, the call
31 is connected to a live representative of the mortgage servicer or
32 lender.

33 (iii) A mortgage servicer or lender satisfies the telephone contact
34 requirements of this subparagraph if it determines, after attempting
35 contact pursuant to this subparagraph, that the successor's primary
36 telephone number and secondary telephone number or numbers
37 on file, if any, have been disconnected.

38 (C) If the successor in interest does not respond within two
39 weeks after the telephone call requirements of subparagraph (B)

1 have been satisfied, the mortgage servicer or lender shall then send
2 a certified letter, with return receipt requested.

3 (D) Provide a means for the successor in interest to contact it
4 in a timely manner, including a toll-free telephone number that
5 will provide access to a live representative during business hours.

6 (E) Post a prominent link on the homepage of its Internet Web
7 site, if any, to the following information:

8 (i) Options that may be available to a successor in interest to
9 avoid foreclosure, and instructions to a successor advising him or
10 her on steps to take to explore those options.

11 (ii) A list of financial documents successor in interest should
12 collect and be prepared to present to the mortgage servicer or lender
13 when discussing options for avoiding foreclosure.

14 (iii) A toll-free telephone number for a successor in interest who
15 wishes to discuss options for avoiding foreclosure with a mortgage
16 servicer or lender.

17 (iv) The toll-free telephone number made available by HUD to
18 find a HUD-certified housing counseling agency.

19 (b) For purposes of this section, all of the following definitions
20 shall apply:

21 (1) “Lender” means a finance lender or broker licensed under
22 the California Finance Lenders Law (Division 9 (commencing
23 with Section 22000) of the Financial Code), a residential mortgage
24 lender licensed under the California Residential Mortgage Lending
25 Act (Division 20 (commencing with Section 50000) of the
26 Financial Code), a commercial or industrial bank organized under
27 the Banking Law (Division 1 (commencing with Section 99) of
28 the Financial Code), a savings association organized under the
29 Savings Association Law (Division 2 (commencing with Section
30 5000) of the Financial Code), and a credit union organized under
31 the California Credit Union Law (Division 5 (commencing with
32 Section 14000) of the Financial Code).

33 (2) “Notification of the death of the mortgagor or trustor” means
34 provision to the mortgage servicer of a death certificate or, if a
35 death certificate is not available, of other written evidence of the
36 death of the mortgagor or trustor deemed sufficient by the mortgage
37 servicer.

38 (3) “Reasonable documentation” means copies of the following
39 documents, as may be applicable, or, if the relevant documentation
40 listed is not available, other written evidence of the person’s status

1 as successor in interest to the real property that secures the
2 mortgage or deed of trust deemed sufficient by the mortgage
3 servicer:

4 (A) In the case of a personal representative, letters as defined
5 in Section 52 of Probate Code.

6 (B) In the case of a surviving joint tenant, an affidavit of death
7 of the joint tenant or a grant deed showing joint tenancy.

8 (C) In the case of a surviving spouse where the real property
9 was held as community property with right of survivorship, an
10 affidavit of death of the spouse or a deed showing community
11 property with right of survivorship.

12 (D) In the case of a trustee of a trust, a certification of trust
13 pursuant to Section 18100.5 of the Probate Code.

14 (E) In the case of a beneficiary of a trust, relevant trust
15 documents related to the beneficiary's interest.

16 (4) (A) "Successor in interest" means a natural person who
17 provides the mortgage servicer with notification of the death of
18 the mortgagor or trustor and reasonable documentation showing
19 that the person is any of the following:

20 (i) The personal representative, as defined in Section 58 of
21 Probate Code, of the mortgagor's or trustor's estate.

22 (ii) The surviving joint tenant of the mortgagor or trustor.

23 (iii) The surviving spouse of the mortgagor or trustor if the real
24 property that secures the mortgage or deed of trust was held as
25 community property with right of survivorship pursuant to Section
26 682.1.

27 (iv) The trustee of the trust that owns the real property that
28 secures the mortgage or deed of trust or the beneficiary of that
29 trust.

30 (B) Designation of a successor in interest for purposes of this
31 subdivision does not impose an affirmative duty on a mortgage
32 servicer or lender to offer a loan modification to, or accept an
33 assumption of the loan by, the successor in interest and does not
34 alter any obligation the mortgage servicer or lender may otherwise
35 have to accept an assumption of the loan by the successor in
36 interest. If a successor in interest assumes the loan, he or she may
37 be required to otherwise qualify for available foreclosure
38 prevention alternatives offered by the mortgage servicer or lender.

1 (c) (1) (A) If a trustee's deed upon sale has not been recorded,
2 a successor in interest may bring an action for injunctive relief to
3 enjoin a material violation of this section.

4 (B) Any injunction shall remain in place and any trustee's sale
5 shall be enjoined until the court determines that the mortgage
6 servicer or lender has corrected and remedied the violation or
7 violations giving rise to the action for injunctive relief. An enjoined
8 entity may move to dissolve an injunction based on a showing that
9 the material violation has been corrected and remedied.

10 (2) After a trustee's deed upon sale has been recorded, a
11 mortgage servicer or lender shall be liable to a successor in interest
12 for actual economic damages pursuant to Section 3281 resulting
13 from a material violation of this section.

14 (3) The Attorney General may bring a civil action in the name
15 of the people to obtain appropriate equitable and declaratory relief
16 whenever the Attorney General has reasonable cause to believe
17 that a violation of this section has occurred.